

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – DETROIT

In re:)
) Case No. 13-53846
)
CITY OF DETROIT, MICHIGAN,) In Proceedings Under Chapter 9
)
Debtor,) Hon. Steven W. Rhodes
)
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**SOUTHEASTERN OAKLAND COUNTY WATER AUTHORITY’S
MOTION FOR INTERVENTION AND TO BE HEARD PURSUANT TO
FEDERAL RULES OF BANKRUPTCY PROCEDURE, RULE 2018
AND TO SUPPORT FACILITATIVE
MEDIATION WITH RESPECT TO ISSUES RELATED TO THE
FUTURE OF THE DETROIT WATER AND SEWERAGE DEPARTMENT**

The Southeastern Oakland County Water Authority (“SOCWA”), a municipal organization, by its attorney, Robert Charles Davis, states the following:

1. Pursuant to L. B. R. 9014-1(b)(1) SOCWA has attached to this Motion at **Exhibit 1** a copy of the proposed order labeled as Exhibit #1.
2. Pursuant to L. B. R. 9014-1(b)(2) SOCWA has attached to this Motion at **Exhibit 2** a Notice of Motion and Opportunity to Object.
3. Pursuant to L.B.R. 9014-1(b)(3) SOCWA has attached as **Exhibit 3** to this Motion a Brief in Support of the Motion and a Certificate of Service at **Exhibit 4** pursuant to L. B. R. 9014-1(b)(4).
4. Pursuant to L.B.R. 9014-1(b)(5), SOCWA has attached an affidavit supporting the relief sought at **Exhibit 5**.
5. Pursuant to L.B.R. 9014-1(g) SOCWA did not seek concurrence with this Motion as to do so would be unduly burdensome.

6. Federal Rules of Bankruptcy Procedure, Rule 2018, states that, in a case under the Code, after a hearing on a motion to intervene and for cause shown, this Bankruptcy Court may permit any interested party to intervene generally or with respect to any specified matter. Here, there is a “specified matter” set forth.

“(a) Permissive intervention

In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.”
(Federal Rules of Bankruptcy Procedure, Rule 2018) (Emphasis Added)

7. This Bankruptcy Court, in **In Re Addison Community Hospital Authority**, 175 B.R. 646, 650-651 (Bkrcty.E.D.Mich.,1994), ruled that granting permissive intervention is within the “court’s discretion”. Specifically, Judge Rhodes ruled, in pertinent part, as follows:

“Granting permissive intervention is within the court's discretion. *In re Benny*, 791 F.2d 712 (9th Cir.1986);” (**In re Addison Community Hosp. Authority**, 175 B.R. 646, 650 -651 (Bkrcty.E.D.Mich.,1994).) (Emphasis Added)

8. This Bankruptcy Court further ruled, in **In Re Addison Community Hospital Authority**, that intervention will be permitted upon the showing of “cause”.

“Intervention will be permitted upon the showing of cause.” (**In re Addison Community Hosp. Authority 175** B.R. 646, 651 (Bkrcty.E.D.Mich.,1994).) (Emphasis Added)

9. This Bankruptcy Court also ruled, in **In Re Addison Community Hospital Authority**, that cause constitutes having an economic interest in the case or one of its aspects. This applies here with respect to the moving party and a specified aspect of the captioned matter.

“Cause constitutes an economic interest in the case or one of its aspects or a concern with its precedential ramifications. *Id.* at 687–88 (citing *In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 853 (Bankr.S.D.N.Y.1989)); *In re Public Service Co. of New Hampshire*, 88 B.R. 546, 551 (Bankr.D.N.H.1988).” (**In re Addison Community Hosp.**

Authority, 175 B.R. 646, 651 (Bkrtcy.E.D.Mich.,1994).) (Emphasis Added)

10. As stated below, SOCWA has a significant economic interest in the above captioned bankruptcy proceeding and one of its defined aspects.

11. The Detroit Water and Sewerage Department (“DWSD”) is a branch of the City of Detroit government. SOCWA has a defined and specific interest in DWSD issues.

12. DWSD currently provides water and sewage service to four million residents of southeast Michigan, most of whom reside in Oakland, Macomb and Wayne Counties (together, the “Counties”).

13. SOCWA, as authorized under Public Act 4 of 1957, by its member communities of Berkley, Beverly Hills, Bingham Farms, Birmingham, Clawson, Huntington Woods, Lathrup Village, Pleasant Ridge, Royal Oak, Southfield and Southfield Township and its customer communities of Bloomfield Hills and Bloomfield Township, is the largest water customer of DWSD.

14. SOCWA currently purchases approximately 7.5% of the total volume of water sold by DWSD. SOCWA, and its predecessor organization, have been a significant water customer of DWSD since 1927.

15. SOCWA is part of the DWSD customer partnering process. SOCWA has served on the Technical Advisory Committee (“TAC”) since its inception in 2003 with two different SOCWA employees serving as the elected co-chair of the TAC. SOCWA employees have also served on each of the technical subcommittees of the TAC and currently serve as the customer chair of the Rates and Analytical Work Group Committees. SOCWA is widely recognized as DWSD’s leading water customer. (**Exhibit 5** – McKeen Affidavit)

16. By way of supporting example, the Western Townships Utilities Authority (“WTUA”), comprised of Canton Township, Northville Township and Plymouth Township, are water and sewer customers of DWSD representing a significant water and sewer customer base of DWSD. The WTUA supports the position of SOCWA herein. (**Exhibit 5** – McKeen Affidavit)

17. By way of additional supporting examples, the following customers of DWSD support the position set forth herein by SOCWA:

- Brownstown Twp.
- City of Livonia
- City of Troy
- West Bloomfield Twp.
- City of Centerline

18. These municipal organizations, when combined with SOCWA and the WTUA, account for about 20.6% of DWSD water sales.

19. By way of example and to show cause as required, the combined water customer value of SOCWA and the supporting WTUA herein represents annual DWSD revenue of approximately \$400 million or 11.1% of total DWSD water sales.

20. It is clear that SOCWA, with or without the combined support herein, has a significant economic interest in the DWSD and this economic interest constitutes cause allowing for SOCWA’s intervention.

21. DWSD is one of the largest providers of high-quality drinking water and wastewater treatment services in the United States. DWSD’s network covers more than 1,000 square miles, and services more than 40 percent of the population of Michigan.

22. The services supplied by DWSD are core functions of government, supplying the most basic and essential human needs. DWSD maintains an extensive infrastructure designed to meet regional needs. SOCWA provides similar services to its member communities.

23. A successful plan for post-bankruptcy Detroit must be an improved and financially sustainable water and sewer system for both Detroit residents and suburban customers such as SOCWA.

24. Although negotiations between the Counties and the City have occurred, the negotiations have not yet reached a conclusion, and need to be accelerated to ensure a timely and beneficial result for all parties, including the customers of DWSD.

25. On August 13, 2013, this Bankruptcy Court entered its Mediation Order (DE 322), appointing Chief District Judge Gerald Rosen of the Eastern District of Michigan, as judicial mediator for the purpose of facilitative mediation. Chief Judge Rosen is authorized to engage in facilitative mediation on discovery, substantive issues and process issues, as referred by the Bankruptcy Court, with such other mediators, judicial or non-judicial, as Chief Judge Rosen may designate.

26. The Mediation Order also provided that this Court may order the parties to engage in any mediation that the Bankruptcy Court refers to Chief Judge Rosen.

27. On April 17, 2014, this Bankruptcy Court entered an Order for Continued Facilitative Mediation.

28. SOCWA asserts that the formation of a regional water authority is a viable solution to the DWSD issues and said issues should be mediated forthwith with a representative from the moving party herein participating actively in that process.

29. SOCWA has many years of experience in managing a water authority and wishes to be part of a regional water authority solution.

30. SOCWA is willing to allocate time and resources to assist in the mediation process and is willing to provide expertise on the water authority issues.

WHEREFORE, the Interested Party, Southeastern Oakland County Water Authority, seeks an Order from this Court:

- (I) Granting SOCWA's Motion for Intervention; and
- (II) Granting SOCWA's intervention which is limited to the issue of SOCWA receiving notices and being authorized to participate in the Facilitative Mediation process for the Detroit Water and Sewage Department / Regional Authority issues; and
- (III) Granting such other relief in favor of SOCWA as this Honorable Court deems just, equitable and appropriate under the circumstances presented.

Respectfully Submitted,

DAVIS BURKET SAVAGE
LISTMAN BRENNAN

/s/ William N. Listman

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Dated: May 2, 2014

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2014, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record by the ECF system. I also certify that on May 2, 2014, I served each of the parties noted on the Court's website as requiring manual noticing/service by placing these documents in a US mail box in the City of Mt. Clemens, State of Michigan. I declare the foregoing statement to be true to the best of my information, knowledge and belief.

DAVIS BURKET SAVAGE
LISTMAN BRENNAN

/s/ William N. Listman

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Dated: May 2, 2014